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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 12, 1997

**AGENDA ITEM**  
For Meeting of: 6-19-97

**MEMORANDUM**

TO: The Commission

THROUGH: John C. Surina  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Michael G. Marinelli  
Staff Attorney

SUBJECT: Draft AO 1997-06

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for June 19, 1997.

Attachment

**DRAFT**

1 ADVISORY OPINION 1997-6

2

3 Kenneth W. Anderson, Jr., Treasurer

4

4 Kay Bailey Hutchison for Senate

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5 PO Box 9190

6

6 Dallas, Texas 75209

7

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8 Dear Mr. Anderson:

9

10 This responds to your letter dated May 15, 1997, on behalf of Kay Bailey Hutchison  
11 for Senate (the "Committee"), the principal campaign committee of Senator Kay Bailey  
12 Hutchison, concerning application of the Federal Election Campaign Act of 1971, as  
13 amended ("the Act"), and Commission regulations to the deposit of certain investment  
14 funds received by the Committee.

15 Specifically, the Committee asks whether section 103.3(a) of Commission  
16 regulations requires the Committee to transfer investment income, received by the  
17 Committee, into its depository checking account before such investment proceeds are  
18 reinvested in the Committee's investment accounts. You explain that the Committee  
19 maintains a checking account with a national banking association, as required by the Act  
20 and Commission regulations. You affirm that, other than certain investment income, all  
21 moneys received by the Committee are deposited into this checking account, including  
22 without limitation, all contributions, rebates, refunds, reimbursements and other receipts  
23 from third parties. You further explain that all disbursements of the Committee are made  
24 out of this checking account. However, you indicate that Committee funds not  
25 immediately needed for expenses are invested in money-market funds and United States  
26 Government securities.

1           You state that the investments are made through and held in investment accounts  
2 maintained with a securities investment firm. The investment income is received in the  
3 form of interest, dividends and gains on the sale or maturity of securities. You explain  
4 that, in order to achieve the maximum return, investment income received is automatically  
5 and directly reinvested in money-market funds maintained in the investment account.  
6 Furthermore, you state that all income earned from these investments is fully disclosed on  
7 Committee reports filed with the Commission for the period when the income is received.  
8 The receipts are listed on Line 15(Other Receipts) of the Detailed Summary Page and are  
9 itemized on an appropriate Schedule A filed with the Committee's FEC FORM 3 Report  
10 of Receipts and Disbursements.

11           The Act and Commission regulations require that each political committee designate  
12 at least one State bank, or Federally chartered depository institution (or another depository  
13 institution if the depository accounts of that entity are insured by the Federal Deposit  
14 Insurance Corporation or the National Credit Union Administration) as its campaign  
15 depository. All receipts received by the committee shall be deposited in the checking  
16 account or accounts maintained in its campaign depository. 2 U.S.C. §432(h)(1), 11 CFR  
17 103.2. No disbursements, other than petty cash, may be made by such committee except  
18 by check drawn on such accounts. 11 CFR 103.3(a), see 2 U.S.C. §432(h) and 11 CFR  
19 102.11.

20           Political committees are permitted to transfer campaign funds for investment  
21 purposes to other accounts. However, these funds must be returned to the campaign  
22 depository account before they can be used to make expenditures. 11 CFR 103.3(a); see  
23 also Advisory Opinions 1986-18 and 1980-39.

1           The Commission notes that section 103.3(a) states that all receipts must be placed  
2 in an account with the political committee's designated depository. Interest and dividend  
3 income constitute "other receipts" which must reported. See 2 U.S.C. §434(b)(2)(J) and  
4 §434(b)(3)(G). These fall under the section 103.3(a) requirement to be placed in an  
5 account of the committee's depository. Read literally, section 103.3(a) would seem to  
6 require that earned interest and dividend income would always have to be re-deposited in  
7 the campaign depository account prior to reinvestment in the investment account.

8           However, the regulation may be read in another manner which fully serves its  
9 underlying purpose and also comports with the related disclosure requirements of the Act  
10 and Commission regulations. The last sentence of section 103.3(a) pertains to the special  
11 situation of investment funds and requires that these funds be returned back to the  
12 campaign depository before they "are used to make expenditures." The Commission notes  
13 Advisory Opinion 1980-39 concluded that transfers of funds out of the campaign  
14 depository for investment purposes are not considered expenditures by a political  
15 committee under 11 CFR 100.8. They are, instead, a conversion of one form of "cash on  
16 hand" to another.<sup>1</sup> It follows then, that the reinvestment of funds earned from committee  
17 investments would also not be considered an expenditure by a political committee which  
18 would require a re-transfer back to the campaign depository. This interpretation is more  
19 consistent with the regulations and prior opinions that have expressly permitted the deposit  
20 of campaign funds in investment accounts. As your request notes, the use of these  
21 investment accounts is not feasible or viable without the typical and necessary automatic

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<sup>1</sup> Under 11 CFR 104.3(a)(1), cash on hand includes "...certificates of deposit, treasury bills and any other committee investments valued at cost."

